HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5932 of 2006

Dated:16.11.2006

Between:

Smt.Vijayanti Tolwala and another.

…Petitioner

and

The Govt. of A.P., and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5932 of 2006

ORDER:

This Writ Petition is filed seeking a writ of mandamus declaring the action of the registering authority in registering the cancellation deed dated 07.03.2006 as document No.3183/2006, as illegal and bad.

This Court while admitting the Writ Petition suspended the cancellation deed. The fourth respondent has now moved an application for vacating the interim order. As the matter is squarely covered by the judgment of Full Bench of this Court in **Yanala Malleshwari and others v. Smt.Ananthula Sayamma and others**[1], the matter is heard finally and is being disposed of by this order.

It is the case of the petitioners that they purchased property admeasuring 1000 square yards in Plot No.8 (E-Block) in Survey No.106/1/Part, situated at Dollar Hills, Poppalguda Village and Gram Panchayat, Rajendranagar Mandal in Ranga Reddy District, from the fourth respondent. The sale deed bearing document No.3808/2003 was registered on 09-06-2003 in favour of the petitioners. They allege that the fourth respondent in collusion with the third respondent got the said sale deed cancelled by a cancellation deed bearing document No.3183/2006 dated 07-03-2006. They contend that registration of

cancellation deed by the third respondent is illegal and contrary to the provisions of the Registration Act, 1908.

Two questions would arise in this writ petition. First, whether it is competent to the registering authority to accept and register a cancellation nullifying the sale deed executed earlier. Second, whether a writ petition would lie to invalidate the cancellation deed at the instance of the person who initially obtained sale deed.

A Full Bench of this Court in **Yanala Malleshwari and others v. Smt.Ananthula Sayamma and others** (supra) laid down as under.

> The person, who has *ex facie* right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely Transfer of Property Act, Contract Act, Specific Relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large.

The Full Bench also considered the question whether the writ petition is maintainable for invalidation of cancellation deed or for cancellation of an instrument, which purports to nullify the sale deed registered earlier. Referring to case law, Full Bench observed as under.

> That disputed questions of fact cannot be gone into in a writ petition is axiomatic. A copious reference to case law is not necessary. As pointed out earlier, among many; it is one of the limitations on the exercise of power of judicial review… … … Therefore, this Court is of considered opinion that the parties should be relegated to the civil Court to file suit either under Section 31 or under Section 34 of Specific Relief Act. Point No.2 is answered accordingly.

Following the same, this writ petition is dismissed observing that the petitioners may approach the civil Court and file a suit either under Section 31 or under Section 34 of the Specific Relief Act, 1963. It may also be noted that as and when the petitioners file the suit, the

civil Court has to decide the disputed questions of fact without in any manner being influenced by the decision of the Full Bench in **Yanala Malleshwari** (supra) or this order. No costs.

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(V.V.S.RAO, J)

16.11.2006
vs

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[1] W.P.Nos.9512 of 2003 and batch, dated 24.10.2006